

March 1, 2019

CENTRAL MAINE POWER COMPANY
Request for Approval of CPCN for the
New England Clean Energy Connect
Consisting of the Construction of a 1,200
MW HVDC Transmission Line from the
Québec-Maine Border to Lewiston
(NECEC) and Related Network Upgrades

JOINT COMMENTS ON THE
STIPULATION OF OFFICE OF THE
PUBLIC ADVOCATE AND
INDUSTRIAL ENERGY CONSUMER
GROUP

NOW COME the Office of the Public Advocate (“OPA”), by Public Advocate Barry Hobbins, and Industrial Energy Consumer Group (“IECG”), by and through its attorneys, Preti, Flaherty, Beliveau & Pachios, LLP, in accordance with the Procedural Order – Stipulation issued February 21, 2019 and provides these Comments on the Stipulation. For the reasons described herein and in their previously filed briefs, OPA and IECG urge the Commission to approve the Stipulation filed on February 21, 2019 in this matter and to grant a Certificate of Public Convenience and Necessity (“CPCN”) to Central Maine Power Company (“CMP”) for its proposed New England Clean Energy Connect project (“NECEC”).

I. This Case is Unique; the Proposed Stipulation is Uniquely Appropriate

a. This Case is Unique

For 106 years, the Commission has regulated utility investments in electricity infrastructure in various ways. Prior to the creation of the Commission in 1913,¹ most Maine utility regulation was municipal in nature and scope. That style of regulation had itself evolved from the common law practice of requiring town meeting votes before large amounts of scarce

¹ Laws of Maine, 1913, c. 129.

private capital could be invested, for example, in a water-powered grain mill.² Typically, such approvals required a commitment to serve all comers (users) on equal terms.³ Regulation of utility investment since then obviously has evolved *somewhat* in parallel with the vast changes in electricity demand, technological innovation, economies of scale and capital formation, but not perfectly. In this case, a statute enacted to vet proposals from Maine electrical utilities fulfilling their duty to serve Maine consumers is to be used by the Commission for purposes of reviewing a proposed \$1 billion elective direct current transmission project intended initially to serve consumers primarily located in another state. This fact pattern may test the adaptive capability of the Commission's statute and regulations. Some may think the fit isn't perfect. They would be right; it isn't perfect.

The Commission, however, has used its broad procedural discretion under Title 35-A, the Administrative Procedures Act, the Maine Rules of Civil Procedure and its own rules of procedure to adapt to the unique circumstance. Every person or entity seeking intervention was allowed to intervene, whether their request was timely or not. Major project opponents were granted late intervention and the procedural schedule was repeatedly adjusted to permit their full participation. Written and oral discovery was broadly permitted. Frequent technical conferences were held. Two opportunities for public testimony were provided. Multiple formal hearings allowed all requested cross examination of pre-filed testimony. All parties were permitted briefs and reply briefs of unlimited length. Commission Staff hosted two settlement conferences. No party has contended it did not have access to the full investigative authority of the Commission to develop a complete record. By the day a Stipulation supported by many, but not all, of the

² See, e.g. Smith, Lincoln. *The Power Policy of Maine*. Berkeley and Los Angeles: University of California Press, 1951).

³ *Id.*

parties was filed, the only steps in the Commission's decision-making process that remained to be accomplished were the issuance of an Examiner's Report, exceptions thereto, and a Commission decision.

Yet, for all of this procedural adaptation, none of it changed the substantive law, the analysis, and the rules by which the Commission implements the statute to determine whether the project is needed and whether the public interest justifies the issuance of a certificate of public convenience and necessity for the NECEC. To some, and especially to OPA and IECG, it appeared that the conventional regulatory focus on the reliability need for the project, and whether the project addressed this need in the most cost effective manner, did not apply. Using, as an alternative, the net benefit standard in reorganization cases, the conclusion could be coldly mathematical. Where the project was guaranteed not to affect CMP's rates, the mathematics did not seem adequate to the circumstances. Here, where the need was economic, not reliability, the public interest seemed to demand that there be tangible benefits to the citizens of Maine. Specifically, where was the real benefit to Maine from hosting 145 miles of steel and cable, causing the alteration of aesthetics, recreation and other values for material numbers of Maine citizens?

b. The Path to a Unique Stipulation

Looking back at the origins of NECEC, OPA and IECG found instructive context and useful guidance. NECEC had won a Massachusetts bid process unprecedented in New England for its scope and objectives. In 2016, the Massachusetts Legislature amended its Green Communities Act by adding Section 83D, directing that state's electric distribution companies to solicit approximately 9.45 TWh of clean energy generation annually for a period of 15 to 20

years, including hydroelectric or Class I RPS eligible resources.⁴ Massachusetts received some 46 bids, including multiple proposed power lines through the Atlantic Ocean from Nova Scotia and Maine to Massachusetts and multiple power lines through each of Maine, New Hampshire and Vermont connecting to hydro or hydro, wind and solar resources in Canada, New York, Vermont, New Hampshire and Maine. From these options, Massachusetts first selected an Eversource (PSNH) project, a 1,200 MW DC line to Hydro-Quebec known as Northern Pass. When New Hampshire siting regulators rejected Northern Pass, NECEC was selected by Massachusetts.

Despite the fact that Northern Pass was one of the most expensive proposals of its kind in the RFP, and NECEC was one of the least expensive, Northern Pass was selected initially. Part of the difference noted by the Public Advocate and IECG was the large public benefits package Northern Pass offered to New Hampshire. NECEC had offered virtually no such package. The Public Advocate and IECG also observed that a line proposed through Vermont by TDI New England offered a public benefits package sized similarly to that of Northern Pass, and that the TDI line had also been rapidly permitted. Why did the determination of the public interest in Vermont and New Hampshire require significant public benefits packages and the same determination in Maine did not? Comparison of the applicable state statutes and rules provided no satisfactory answer.

The need for a rational answer intensified when the Public Advocate discovered that NECEC's winning bid included a commitment to fund programs for Massachusetts' low-income consumers at a cost of \$50 million over forty years. CMP's NECEC petition contained no similar benefit for Maine low-income consumers. The Public Advocate, the statutory

⁴ Massachusetts Act of 2016, Chapter 188, Section 12.

representative of Maine’s low-income consumers, went public with his outrage: “Not a penny less for Maine’s low-income consumers,” said Advocate Hobbins.

By this point, which was subsequent to the breakdown of larger group settlement discussions moderated by the Commission Staff, CMP had initiated individual settlement discussions with numerous parties and had responded to other parties’ expressions of interest in settlement. CMP responded to the Public Advocate, but progress was sporadic and inconclusive. Then-Governor LePage entered discussions on public benefit with CMP, and then directly with Hydro-Quebec, including a visit to Hydro-Quebec. Governor LePage reportedly sought a fund to benefit small manufacturers. As his Administration wound down, his talks with Hydro-Quebec apparently faltered, reaching no agreement.

The Public Advocate and counsel to IECG met to discuss a path forward in the case. Each spoke of sensing the imperfect fit of NECEC to Maine’s CPCN approval standards and of the need to demonstrate material public benefit to Maine from hosting a 145 mile steel and cable DC high voltage line primarily to meet the electricity desires of Massachusetts. They decided to bring the NECEC’s ultimate proponent, Hydro-Quebec, to the negotiation table. They asked CMP and Avangrid to meet.

Two days after the November 6, 2018 election of Janet Mills as Governor of Maine, executives from CMP and Avangrid met with the Public Advocate and counsel to IECG in South Portland, Maine. CMP and Avangrid agreed to ask Hydro-Quebec to enter into negotiations with the Public Advocate and IECG to create a settlement of the NECEC proceeding at the Commission. The Public Advocate and IECG agreed to lead an effort to create a broad and inclusive settlement, but only if it were comparable to the public benefits packages for the TDI project in Vermont and the Northern Pass project in New Hampshire. Hydro-Quebec had

intervened in neither the Commission proceeding nor the related Massachusetts proceeding. The Public Advocate and IECG's counsel agreed to seek the broad and inclusive settlement CMP desired only if a foundational agreement first could be reached with Hydro-Quebec, CMP and Avangrid.

Fifty-two days later, CMP, Avangrid, Hydro-Quebec US ("HQUS"), the Public Advocate and IECG⁵ finally met in Portland, Maine, to determine if negotiations could be fruitful. Over the next several weeks, the same parties met multiple times in intense and difficult negotiations. They were joined by senior executives from Hydro-Quebec and by a non-participating observer representing Governor Janet Mills' Energy Office, former Commission Chair Thomas Welch.

c. Creation of a Uniquely Appropriate Stipulation

Several challenges confronted the negotiators. The price of the Vermont TDI bid and the price of the Northern Pass bid in the Massachusetts RFP each included the cost of most or all of their public benefits package for the host states. CMP's NECEC obviously did not, which contributed to its lower cost but which meant that additional benefits would come out of any profits by CMP and Hydro-Quebec; in other words, they would be spending their own money, not money paid by customers in Massachusetts. Further, this proceeding was well underway; observers could handicap the outcome. How could a broad and inclusive settlement be produced at any rational cost, especially with opposing Generator Intervenors having tens of millions of dollars at stake in price suppression-driven lost revenues and some parties opposing any line at all? Finally, parties had widely divergent opinions on the exact meaning and actual value of the TDI and Northern Pass public benefits packages.

⁵ IECG President Robert Dorko, assisted by counsel, represented IECG in virtually all negotiations.

Agreement among these parties on fundamental terms came hard, requiring additional financial commitments by CMP, HQUS and Hydro-Quebec, but agreement came, nonetheless. After several days of many hours of difficult negotiations, the Public Advocate and IECG concluded that the agreed foundational settlement package met three key criteria: the package was comparable to the TDI and Northern Pass actual packages; Maine would obtain significant additional tangible benefits from hosting NECEC; and the Public Advocate and IECG believed they had “left nothing on the table.”

At the same time, a nascent common purpose grew among the parties to focus the available monies effectively and accurately. For example, the fact that 52% of Maine’s CO₂ emissions come from the transportation sector, compared to only 9% from the electric sector, led the Public Advocate and IECG to seek funds for EV charging stations, the “but for” impediment to EV expansion in Maine. Hydro-Quebec, as part of the Province of Quebec’s huge effort to move half its population to EVs, made its world-class EV consultant available to estimate what could be achieved in Maine with \$10-15 million. The answer: a cutting-edge technology system that allows EVs to travel securely to and from Maine’s popular destinations, even given that Maine is a large place. Hydro-Quebec agreed to employ its great expertise in EV transitions, designing and constructing the system for Maine.

The allocation of \$15 million to heat pumps was driven by knowledge that over 60% of Maine homes still heat with oil (highest in the entire nation), and that heat pumps are highly efficient alternatives that advance the transition to lower carbon. Restricting these funds to heat pumps (later modified to include technologies of equal efficiency) was based on a shared desire to focus money both where it was most effective and to avoid frittering away scarce monies on administration and the increased costs of supporting multiple technologies.

These are two examples of the value of knowledgeable and adverse parties in creating a fundamental basis for a broad settlement. Similar analyses led to the rate reduction fund. Those funds might have been spent differently on a “Christmas tree” of benefits, but some rate reduction was a shared imperative. Here, the negotiating parties sought to combine monies with the most conservative LEI price suppression benefits of NECEC to create a reasonable possibility of a minimum 3 mil per kWh benefit to every CMP ratepayer. To create the possibility of frontloading these benefits, the parties allocated \$1 million to securitizing the 40 year cash flow of these and other 40 year benefit provisions.

Several other elements of the Stipulation reflect the unique needs of those Maine communities that will host significant portions of the line. The \$5 million Franklin County Host Communities Fund will provide funds for workforce development, business retention, and entrepreneurial support, providing direct benefits to an area of the State with fewer economic opportunities than Southern Maine and which is directly impacted by the line. Similarly, \$5 million in education-related grant funding will be targeted for students in Franklin and Somerset counties, including scholarships, internships, vocational programs and innovative training programs. The construction of broadband infrastructure in the NECEC corridor and the contribution of \$15 million to the State and to local communities to support broadband expansion recognizes the fact that many of the rural communities hosting the line lack access to the broadband speeds necessary to support contemporary economic activity. These provisions will also help to implement parts of Governor Mills’ Economic Action Plan.

We would be remiss if we did not mention the role of the Mills Administration through the Governor’s Energy Office and their (pro bono) observer, Tom Welch, in improving both the

possibility of reaching agreement and the substance of the agreement itself.⁶ Former Commission Chair Tom Welch observed all but one of the negotiations hosted by the Public Advocate and IECG. He spoke with parties together and separately, although not in support of or in opposition to any negotiating position or result. Governor Mills was kept informed of the negotiations by her Energy Office and Tom Welch. Governor Mills or her staff had parsed the language of every relevant document, from the Stipulation itself to tangential agreements, also with the counsel of OPA. Governor Mills' legal counsel asked questions and suggested clarifications. And then Governor Mills asked her Energy Office a fundamental question: who is guaranteeing the financial obligations of CMP and HQUS under the agreement? Now, the Stipulation contains clear answers: Avangrid and Hydro-Quebec, respectively.⁷ The answers to Governor Mills' question have two consequences. First, the guarantees should make it easier to securitize and thus front load the several forty-year payment streams, should that be in the public interest. Second, Governor Mills' question capstones her Energy Office's highly constructive involvement and means this Stipulation has been examined in detail and found to be in the public interest by the only State of Maine public official elected by all the citizens of Maine. That does not diminish the Commission's role, but it unquestionably adds public interest gravitas of a high order to the Stipulation.⁸

This case is unique, and the proposed Stipulation is uniquely appropriate.

⁶ The Governor's Energy Office is an intervenor in the proceeding. Governor Mills' participation was entirely through the Governor's Energy Office.

⁷ Stipulation at Sections V.B, Paragraph 1(d)(iv) and V.B, Section 14(a)(viii).

⁸ See, footnote 9, *infra*, Verizon AFOR Order at pp. 5-7.

II. The Standard of Review

In the Procedural Order – Comments on Stipulation issued February 25, 2019, the Examiners requested that the parties provide comment on the following four issues identified in Chapter 110, Section 7(D) of its rules:

- a. Whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- b. Whether the process that led to the stipulation was fair to all parties;
- c. Whether the stipulated result is reasonable and is not contrary to legislative mandate; and
- d. Whether the overall stipulated result is in the public interest.

The Commission has addressed the application of these standards in the context of stipulations that are contested.⁹ In approving a Stipulation regarding the Commission's regulation of telephone utility Verizon, the Commission found that neither these standards nor the Commission's rules require that every party be included in every settlement meeting.¹⁰ The Commission further found that it was reasonable not to include all individual parties in certain settlement discussions, for instance parties whose views are clear and the other parties did not plan to incorporate such views in their agreement.¹¹

The Commission reaffirmed these findings in its order approving a Stipulation regarding CMP's MPRP transmission project. In that proceeding, at the hearing on the Stipulation, counsel

⁹ See, e.g., *Central Maine Power Company and Public Service of New Hampshire, Request for Certificate of Public Convenience and Necessity for the Maine Power Reliability Program Consisting of the Construction of Approximately 350 Miles of 345 kV and 115 kV Transmission Lines ("MPRP")*, Docket No. 2008-255, Order Approving Stipulation (June 10, 2010) (the "MPRP Order"); *Public Utilities Commission, Investigation into Verizon Maine's Alternative Form of Regulation*, Docket No. 2005-155, Order Approving Stipulation, Docket No. 2005-155 (Oct. 3, 2007) (the "Verizon AFOR Order").

¹⁰ Verizon AFOR Order at pp. 6-7.

¹¹ *Id.* at p. 8.

for CMP noted that during the course of the case, which involved over 160 intervenors, the Company had numerous bilateral discussions, including discussions with individual landowners and groups of landowners that were parties to the proceeding, and during the course of such discussions it became clear, at least with regard to some of these parties, that the positions of the parties were not reconcilable.¹²

In deciding whether the process that leads to a Stipulation was fair, the entire process must be looked at as a whole.¹³ In the MPRP proceeding, the Stipulation was filed with the Commission after the hearing and briefing stages.¹⁴ The Commission found that this timing ensured that all parties have had a full opportunity to present their positions.¹⁵ In addition, the Commission found that the opportunity for parties who were not signatories to the Stipulation to file written objections, thereby providing those parties with an opportunity to be heard, contributed to the fairness of the process.¹⁶ Finally, the Commission found that the establishment of settlement conferences prior to filing of the Stipulation, which were open to all parties, contributed to the overall fairness of the process.¹⁷

In the Verizon AFOR proceeding, one party expressed a separate concern regarding the fairness of the process because of participation by persons who are not parties to this proceeding, notably an advisor from the Governor's Office and a utility under contract to acquire Verizon's landline business in Maine.¹⁸ With respect to this concern, the Commission found that there is no rule or law that prohibits a party to this proceeding from talking with persons that are not

¹² MPRP Order at p. 21.

¹³ *See*, Verizon AFOR Order at p. 9.

¹⁴ MPRP Order at p. 22.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Verizon AFOR Order at p. 5.

parties and thus their participation in negotiations does not raise concerns about fairness.¹⁹ With respect to the Governor's Office in particular, the Commission noted that the Public Advocate is appointed by and, at that time, served at the pleasure of the Governor,²⁰ and that the Governor is the sole elected official state representative of all Maine citizens. Therefore, the Commission found that inclusion of the Governor in discussions enhanced a finding that all citizens were represented in the development of the Stipulation.²¹

With respect to the requirement that a stipulation be supported by a broad spectrum of interests, in the Verizon AFOR proceeding a consumer advocacy group argued that its interest was disenfranchised by approval of a stipulation to which it was not a party.²² However, the Commission found that the participation in the stipulation by the OPA was sufficient to address the interest of all consumers in Maine in a manner to satisfy this prong of the Commission's analysis.²³ Thus, the participation in a settlement of a party with an aligned interest supports a finding that a broad spectrum of interests is represented, even if other parties with an overlapping interest decide not to participate in the settlement.

Further, even omission of certain interests from a stipulation does not preclude satisfaction of the "broad spectrum of interests" requirement. In the MPRP proceeding, parties represented affecting landowners asserted that their interest was not represented in the Stipulation, and therefore the Stipulation failed to satisfy this requirement.²⁴ However, in the MPRP Order, the Commission noted that the primary purpose of the Commission's first requirement that a broad spectrum of interests were represented in the Stipulation is to ensure

¹⁹ *Id.* at p. 8.

²⁰ Like the Office of Public Advocate in the Verizon AFOR proceeding, the Governor's Energy Office is a party to this proceeding and is an Executive Department that reports to the Governor. 2 M.R.S.A. §9.

²¹ Verizon AFOR Order at p. 7.

²² *Id.* at p. 5.

²³ *Id.* at pp. 5-7.

²⁴ MPRP Order at p. 20.

that the Commission does not approve stipulations where the signing parties represent only a narrow interest.²⁵ The Commission found that this prong of the Commission's analysis is not intended to require, and does not mean, that all parties participating in a case must sign a stipulation for the Commission to approve it.²⁶

With respect to whether a stipulation is reasonable and in the public interest, the appropriate considerations are whether the overall benefits of granting the requested approval are greater than the costs and risks associated with doing so.²⁷ In the Stipulation considered in the FairPoint Order, the Commission considered the third and fourth prongs of the standards now set forth in Chapter 110, Section 7(D) on a consolidated basis,²⁸ i.e., whether the stipulated result is reasonable and is not contrary to legislative mandate and whether the overall stipulated result is in the public interest. Effectively, reasonableness and the public interest were treated as a single standard or overlapping standards. In analyzing whether the settlement was reasonable and in the public interest, the Commission balanced the overall benefits of the transaction against its costs and risks.²⁹ OPA and IECG agree with the analytical approach applied by the Commission in the FairPoint Order, and in these comments will address the question of the reasonableness of the Stipulation together with the question of whether it is in the public interest.

²⁵ *Id.*, citing *Re Public Utilities Commission, Investigation Into Regulatory Alternatives for the New England Telephone and Telegraph Company d/b/a NYNEX*, Docket No. 94-123 (Reopened), Order at 5 (March 17, 1998).

²⁶ *Id.*

²⁷ See, e.g., *Verizon New England Inc., Northern New England Telephone Operations Inc., Enhanced Communications of Northern New England Inc., Northland Telephone Company of Maine, Inc., Sidney Telephone Company, Standish Telephone Company, China Telephone Company, Maine Telephone Company, and Community Service Telephone Co., Joint Application for Approvals Related to Verizon's Transfer of Property and Customer Relations to Company to be Merged with and into FairPoint Communications, Inc.*, Docket No. 2007-00067, Order (February 1, 2008) (the "FairPoint Order") at pp. 12 and 16-18.

²⁸ *Id.* at p. 16 *et seq.*

²⁹ *Id.* at pp. 12 and 16-18.

III. Discussion

a. The Stipulating Parties Represent a Broad Spectrum of Interests

The Stipulation filed in this matter was executed by CMP, the OPA, the Governor's Energy Office, IECG, CLF, the Acadia Center, Western Mountains & Rivers Corporation ("WMRC"), the City of Lewiston, the Maine State Chamber of Commerce, and the International Brotherhood of Electrical Workers. While this group does not include every party in the proceeding, it is a group of parties with a broad spectrum of interests that overlap with the general interests of most parties in this proceeding, and thereby represent a sufficient spectrum of interests to satisfy this prong of the Commission's analysis.

A number of parties have intervened in this proceeding as customers of CMP, as residents of Western Maine who believe they may be affected by the line, or because they are concerned with the potential environmental impacts of the line. The interest of such intervenors are closely aligned with the OPA, the Governor's Energy Office, WMRC, CLF and the Acadia Center, respectively. The fact that they may have reached different conclusions with respect to participating in the Stipulation does not undermine the fact that parties who are participating in the Stipulation represent overlapping interests.³⁰

The only interest that may be omitted among the parties to the Stipulation appears to be that of competitors to the NECEC project, notably Calpine Corporation, Vistra Corporation and Bucksport Generation, LLC ("the Generator Intervenors") and NextEra Energy Resources, LLC ("NextEra"). While they have each raised issues useful to the Commission's analysis of the benefits of the NECEC project, they each represent interests that would benefit from the cancellation of the NECEC project, regardless of whether the project provides substantial

³⁰ See, Verizon AFOR Order at pp. 5-7.

benefits to Maine citizens and energy consumers. Their decision not to participate in the Stipulation is therefore not surprising. More importantly, their failure to participate in the Stipulation does not undermine the requirement that the stipulating parties represent a broad spectrum of interests.³¹ Other Stipulation opponents include the trade associations for the renewable generators (MREA and RENEW), as well as ReEnergy. They, too, have intervened out of a competitive interest.

We also note that two towns who oppose the Stipulation, Caratunk and Alna, populations 69 and 709, respectively, represent just two of the many communities that would host the NECEC project. At least 21 cities and towns and 3 county governments maintain their support for the project including Stipulation signatory City of Lewiston (population of 36,592).³² Similarly, environmental advocacy group, Natural Resources Council of Maine has expressed opposition to the Stipulation. Each of these parties has been traditionally opposed to any energy development in Maine. However, the well recognized environmental advocacy groups Conservation Law Foundation and the Acacia Center have signed the Stipulation.

In conclusion, the stipulating parties represent an extremely broad spectrum of spectrum of interests. They include representatives of small energy consumers (the OPA), large energy consumers (IECG and the Maine State Chamber of Commerce), host communities (the City of Lewiston), the general citizenry of Maine (the Governor's Energy Office and the OPA), local citizens and recreations users of Western Maine (WMRC), labor interests (the IBEW), and environmental interests (CLF and the Acadia Center). This remarkable range of interests is more

³¹ MPRP Order at p. 20; *Re Public Utilities Commission, Investigation Into Regulatory Alternatives for the New England Telephone and Telegraph Company d/b/a NYNEX*, Docket No. 94-123 (Reopened), Order at 5 (March 17, 1998).

³² See, Reply Brief of CMP (February 13, 2019) at fn. 97.

than adequate to support a finding by the Commission that the Stipulation is supported by a broad spectrum of interests.

b. The Process that Led to the Stipulation was Fair

The process that led to the Stipulation in this proceeding was fair. Earlier in the proceeding, there were a series of settlement meetings to which all parties to the proceeding were invited. These meetings were attended by the most vocal opponents of the project, including the Generator Intervenors and NextEra. It became clear after good faith efforts by all of the parties, that settlement was not possible at that time.

Later in the proceeding, more limited groups of parties who believed there was a common basis for resolving the outstanding issues in the proceeding began holding further meetings. As described above, these efforts eventually brought Hydro-Quebec and Hydro-Quebec US to the table to negotiate a fundamental agreement that could be offered to and changed to a mutually agreed extent to gain the support of other parties. These parties included, among others, CMP, the OPA, IECG, the Conservation Law Foundation (“CLF”), the Acadia Center, and the Governor’s Energy Office. Following the achievement of an agreement among this group, on February 1, 2019, CMP, the OPA and the IECG filed a request that the Examiners schedule a settlement conference as soon as possible.

An initial settlement conference was held on February 5, 2019 and second conference on February 12, 2019. Parties were provided the opportunity within these conferences and through separate communications to ask questions about the terms as presented and to request changes to those terms. Efforts were made within these conferences and through separate communications to have all parties join the Stipulation. Several additional parties did join the Stipulation

following these efforts and a final executed Stipulation was filed by the settling parties on February 21, 2019.

The process leading to the Stipulation was similar to those in both the MPRP proceeding and the Verizon AFOR proceeding. Like both of those proceedings, at some stages of the negotiations certain parties were not included.³³ Like the MPRP proceeding, settlement conferences were conducted prior to filing of the Stipulation that were open to all parties.³⁴ This contributes to the overall fairness of the process.³⁵

Like the MPRP proceeding, the Stipulation in this proceeding was filed with the Commission after the hearing and the initial briefing stage.³⁶ In this proceeding, unlike the MPRP proceeding, Reply Briefs were filed after the Stipulation was filed, but the briefing process was completed in advance of final Commission action.

Because a full proceeding through the final briefing stage has been completed, parties have had a fair and complete opportunity to conduct discovery, present evidence, conduct cross examination and present legal arguments regarding the merits of the NECEC proposal. It is therefore unnecessary to allow the opportunity for opposing parties to conduct additional discovery or to present additional evidence. The underlying evidence with respect to the public need for NECEC remains the same and, again, parties have had a full opportunity to review and address those matters. The only issue raised by the filing of the Stipulation is whether the concessions offered by and through CMP and its other provisions enhance the public need for the project, in particular, whether the project is in the public interest. Allowing supplemental argument, as the Examiners have allowed, is the only additional procedural step necessary to

³³ Verizon AFOR Order at pp. 6-8; MPRP Order at pp. 21-22.

³⁴ MPRP Order at p. 22.

³⁵ *Id.*

³⁶ *Id.*

ensure that the process is fair and satisfies the requirements of due process.³⁷ This process is the same one used by the Commission in the MPRP proceeding in similar circumstances and is both fair and reasonable.

In deciding whether the process that lead to the Stipulation was fair, the entire process must be looked at as a whole.³⁸ The process leading to the Stipulation was fair because all parties were initially provided an opportunity to participate. When that process failed, it was reasonable for those parties believing that there was a reasonable basis to pursue discussions to do so among themselves. Further, prior to the filing of the Stipulation, settlement conferences were held to which all parties were invited. Finally, parties have had a full opportunity to develop a record and to file briefs on all issues relevant to the public need for the NECEC project. Under Commission precedent and any general notion of fairness, the process leading to the Stipulation was fair.

c. The Stipulated Result is not Contrary to Legislative Mandate

The stipulated result is not contrary to legislative mandate.³⁹ Pursuant to 35-A M.R.S.A. §3132(6), in granting a certificate of public convenience and necessity, the Commission must “make specific findings with regard to the public need for the proposed transmission line,” “specific findings with regard to the likelihood that nontransmission alternatives can sufficiently address the identified public need,” and “take into account economics, reliability, public health and safety, scenic, historic and recreational values, state renewable energy generation goals, the proximity of the proposed transmission line to inhabited dwellings and alternatives to

³⁷ *Id.*

³⁸ *See*, Verizon AFOR Order at p. 9.

³⁹ OPA and IECG agree with the analytical approach applied by the Commission in the FairPoint Order, and in these comments will address the question of the reasonableness of the Stipulation together with the question of whether it is in the public interest. *See* FairPoint Order at p. 16 *et seq.*

construction of the transmission line, including energy conservation, distributed generation or load management.” As described below, the NECEC project and the Stipulation satisfy all legislative mandates.

The terms “public need”, “public convenience” and “public necessity” are not expressly defined terms in the statute. Therefore, there are no specific legislative mandates imposed within these terms that prevent the granting of a CPCN to an elective transmission upgrade such as NECEC, even when intended to serve consumers in another state.

The Commission is required to consider a number of factors and to make specific findings with respect to those factors. However, except with respect to nontransmission alternatives, there is no mandated outcome that arises from these findings. With respect to these matters, the statute leaves to the Commission the decision of what weight to assign to its conclusions arising from the evidence presented with respect to these issues. The Commission could, hypothetically, find that a proposed line has an adverse impact or harms the state’s ability to achieve certain goals, but then find that benefits from a project outweigh these concerns. The appropriate manner in which to address this issue is therefore to consider it as part of a larger balancing of benefits, risks and costs to Maine energy consumers and citizens associated with the project.

With respect to nontransmission alternatives alone, 35-A M.R.S.A. §3132(2-D) requires the Commission to “consider the results of an investigation by an independent 3rd party, which may be the commission or a contractor selected by the commission, of nontransmission alternatives.” Various parties have argued that this requirement has not been satisfied in this proceeding.⁴⁰ These arguments are unavailing.

⁴⁰ See, e.g., NextEra Brief at p. 8.

As described in OPA's and IECG's previous briefs, while subsection 2-B requires an investigation, the nature and scope of the required investigation are left to the discretion of the Commission. Indeed, there is no prohibition against using the hearings in this proceeding as the required investigation.

IECG agrees with the analysis of the Office of the Public Advocate:

The definition of "non-transmission alternative" includes only "energy efficiency and conservation, load management, demand response and distributed generation." Because there is no way to transmit power from Canada to the ISO-NE grid that would use one of these approaches and not a line, there is no alternative in the statute to the line.⁴¹

Under these circumstances, an abbreviated investigation by the Commission within the context of the general CPCN proceeding is appropriate and is within the Commission's statutory authority. Therefore, approving the Stipulation in this matter and granting a CPCN for the NECEC project is not contrary to legislative mandate.

d. The Stipulated Result is Reasonable and is in the Public Interest

In the initial Brief of IECG filed on February 1, 2019 (the "IECG Brief"), IECG argued that the concept of public convenience and necessity incorporated a requirement that an applicant seeking a certificate of public convenience and necessity demonstrate that its proposal was in the public interest.⁴² IECG further argued that the appropriate analysis of whether a proposal is in the public interest is to conduct a balancing test of the benefits of a proposal versus the costs and

⁴¹ OPA Brief at p. 24.

⁴² IECG Brief at pp. 13-14, citing *Enhanced Communications of Northern New England, Inc. v. Public Utilities Commission*, 2017 ME 178 (construing "public convenience and necessity" as being synonymous with "public benefit" or "public interest") and *Zachs v. Department of Public Utilities*, 547 N.E.2d 28, 32 (Mass. 1989) (finding that "the phrase 'public convenience and necessity' is a term of art that stands for the general notion of 'public interest'").

risks of the proposal. This approach is strongly supported by the FairPoint Order specifically in the context of reviewing whether a stipulation is in the public interest.⁴³

Because IECG believes that the public interest requirement is so fundamental to public convenience and necessity, it spent a significant portion of its initial Brief and the Reply Brief of IECG filed on February 13, 2019 (the “IECG Reply Brief”) presenting its analysis of how the NECEC project is in the public interest. To summarize here, OPA and IECG believe NECEC is in the public interest because:

- NECEC will provide economic development benefits in the form of contribution to Maine GDP and incremental property tax revenues of \$660 million-\$1.1 billion that will be heavily front-loaded;⁴⁴
- NECEC will provide Maine retail customers with \$119-\$384 million in net present value energy price reductions during its initial fifteen years of operation;⁴⁵
- NECEC will deliver a minimum of 745 MW of new carbon free renewable generation to New England, contributing substantially to the region’s efforts to meet its greenhouse gas reduction goals;⁴⁶
- NECEC will provide Maine retail energy suppliers with an option at no cost to them to purchase renewable energy from HQ at a cost that may be below that of other available renewable sources. Much of this available energy would qualify under Maine’s existing RPS standards;⁴⁷
- NECEC will enhance the fuel diversity and fuel security of the New England region by reducing dependence on natural gas, particularly during peak period;⁴⁸
- NECEC will not have an adverse impact on the development of renewable energy projects within the State of Maine;⁴⁹
- The foregoing benefits are provided to Maine at no cost and do not present any new risk to the reliability of the service that CMP customers presently receive.⁵⁰

⁴³ FairPoint Order at p. 16 *et seq.*

⁴⁴ IECG Reply Brief at pp. 2-5.

⁴⁵ *Id.* at pp. 5-6.

⁴⁶ *Id.* at pp. 6-7.

⁴⁷ *Id.* at pp. 8-9.

⁴⁸ IECG Brief at pp. 29-30.

⁴⁹ *Id.* at pp. 37-41.

⁵⁰ IECG Reply Brief at pp. 9-11.

These represent substantial positive net benefits to Maine citizens and Maine energy customers that IECG argued in its earlier briefs are sufficient to support the approval of a CPCN for the NECEC project. The addition of incremental benefits and ratepayer protections incorporated into the Stipulation serves to further support the conclusion that NECEC, and therefore the Stipulation is reasonable and in the public interest. These include, but are not limited to the following additional benefits and protections:

- Transfer of the NECEC project into a separate entity as strongly urged by OPA thereby insulating CMP customers from potential exposure to financial risks that might arise in connection with the NECEC project;
- Creation of a \$50 million Low-Income Customer Benefits Fund as demanded by OPA;
- Creation of a \$140 million NECEC Rate Relief Fund;
- Construction of broadband infrastructure in the NECEC corridor and contribution of \$15 million to the State and to local communities to support broadband expansion;
- Creation of a \$15 million NECEC Heat Pump Fund;
- Creation of a \$15 million NECEC Electric Vehicle Fund;
- Creation of a \$5 million Franklin County Host Communities Fund;
- Contribution of \$6 million for education-related grants;
- Commitment to studying the enhancement of the Maine transmission grid to support the development of additional renewable generation;
- Commitment to long-term planning for regional decarbonization.

These represent an additional \$250 million in benefits to Maine citizens and energy consumers and address potential risks in a meaningful manner. Further, these benefits are tangible and enforceable. Finally, these benefits and protections are in addition to the more than \$1 billion in benefits already provided, as well as the customer protections previously agreed to by CMP as part of the record in this proceeding.⁵¹ Collectively, these benefits and protections

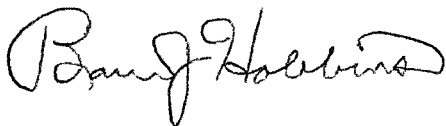
⁵¹ Rebuttal Testimony of Thorn Dickinson, Eric Stinneford and Bernardo Escudero (July 13, 2018) at 50-53.

ensure that the benefits of NECEC substantially exceed any costs or risks relating to the project. The Stipulation and the NECEC project itself are therefore reasonable and in the public interest.

IV. Conclusion

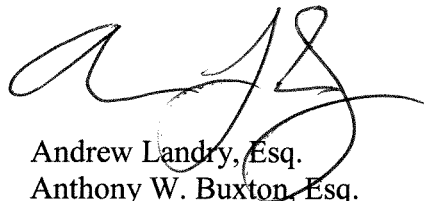
For each of the foregoing reasons, OPA and IECG urge the Commission to approve the Stipulation filed on February 21, 2019 in this proceeding and to grant a CPCN for the construction of NECEC.

Respectfully submitted this 1st day of March, 2019.



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